

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY MAY 6, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2347

Introduced by Assembly Member Feuer

February 19, 2010

An act to amend Section 2924f of the Civil Code, relating to mortgage defaults.

LEGISLATIVE COUNSEL'S DIGEST

AB 2347, as amended, Feuer. Mortgage defaults: secondary public financing.

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised.

This bill would create an exception to the provision governing the exercise of the power of sale by providing that if a property contains 5 or more multifamily units and a public entity, as defined, ~~holds a deed of trust, or is a party to a recorded rent~~ regulatory agreement *or recorded deed restriction* on the property, the public entity may, by written notice to the trustee, postpone the sale date by no more than 60 days. The bill would provide that, if multiple public entities ~~hold deeds of trust or are parties to a recorded rent~~ regulatory agreement *or a recorded deed*

restriction on the property, only one entity may postpone the sale date. The bill would also provide that the power to postpone a sale date pursuant to these provisions may be exercised only once, and that it may only be exercised if the public entity provides written notice using one of 3 specified methods within a specified period prior to the noticed sale date.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924f of the Civil Code is amended to
2 read:
3 2924f. (a) As used in this section and Sections 2924g and
4 2924h, “property” means real property or a leasehold estate therein,
5 and “calendar week” means Monday through Saturday, inclusive.
6 (b) (1) Except as provided in subdivision (c), before any sale
7 of property can be made under the power of sale contained in any
8 deed of trust or mortgage, or any resale resulting from a rescission
9 for a failure of consideration pursuant to subdivision (c) of Section
10 2924h, notice of the sale thereof shall be given by posting a written
11 notice of the time of sale and of the street address and the specific
12 place at the street address where the sale will be held, and
13 describing the property to be sold, at least 20 days before the date
14 of sale in one public place in the city where the property is to be
15 sold, if the property is to be sold in a city, or, if not, then in one
16 public place in the judicial district in which the property is to be
17 sold, and publishing a copy once a week for three consecutive
18 calendar weeks, the first publication to be at least 20 days before
19 the date of sale, in a newspaper of general circulation published
20 in the city in which the property or some part thereof is situated,
21 if any part thereof is situated in a city, if not, then in a newspaper
22 of general circulation published in the judicial district in which
23 the property or some part thereof is situated, or in case no
24 newspaper of general circulation is published in the city or judicial
25 district, as the case may be, in a newspaper of general circulation
26 published in the county in which the property or some part thereof
27 is situated, or in case no newspaper of general circulation is
28 published in the city or judicial district or county, as the case may
29 be, in a newspaper of general circulation published in the county

1 in this state that (A) is contiguous to the county in which the
2 property or some part thereof is situated and (B) has, by comparison
3 with all similarly contiguous counties, the highest population based
4 upon total county population as determined by the most recent
5 federal decennial census published by the Bureau of the Census.
6 A copy of the notice of sale shall also be posted in a conspicuous
7 place on the property to be sold at least 20 days before the date of
8 sale, where possible and where not restricted for any reason. If the
9 property is a single-family residence the posting shall be on a door
10 of the residence, but, if not possible or restricted, then the notice
11 shall be posted in a conspicuous place on the property; however,
12 if access is denied because a common entrance to the property is
13 restricted by a guard gate or similar impediment, the property may
14 be posted at that guard gate or similar impediment to any
15 development community. Additionally, the notice of sale shall
16 conform to the minimum requirements of Section 6043 of the
17 Government Code and be recorded with the county recorder of the
18 county in which the property or some part thereof is situated at
19 least 20 days prior to the date of sale. The notice of sale shall
20 contain the name, street address in this state, which may reflect an
21 agent of the trustee, and either a toll-free telephone number or
22 telephone number in this state of the trustee, and the name of the
23 original trustor, and also shall contain the statement required by
24 paragraph (3) of subdivision (c). In addition to any other
25 description of the property, the notice shall describe the property
26 by giving its street address, if any, or other common designation,
27 if any, and a county assessor's parcel number; but if the property
28 has no street address or other common designation, the notice shall
29 contain a legal description of the property, the name and address
30 of the beneficiary at whose request the sale is to be conducted, and
31 a statement that directions may be obtained pursuant to a written
32 request submitted to the beneficiary within 10 days from the first
33 publication of the notice. Directions shall be deemed reasonably
34 sufficient to locate the property if information as to the location
35 of the property is given by reference to the direction and
36 approximate distance from the nearest crossroads, frontage road,
37 or access road. If a legal description or a county assessor's parcel
38 number and either a street address or another common designation
39 of the property is given, the validity of the notice and the validity
40 of the sale shall not be affected by the fact that the street address,

1 other common designation, name and address of the beneficiary,
2 or the directions obtained therefrom are erroneous or that the street
3 address, other common designation, name and address of the
4 beneficiary, or directions obtained therefrom are omitted. The term
5 “newspaper of general circulation,” as used in this section, has the
6 same meaning as defined in Article 1 (commencing with Section
7 6000) of Chapter 1 of Division 7 of Title 1 of the Government
8 Code.

9 The notice of sale shall contain a statement of the total amount
10 of the unpaid balance of the obligation secured by the property to
11 be sold and reasonably estimated costs, expenses, advances at the
12 time of the initial publication of the notice of sale, and, if
13 republished pursuant to a cancellation of a cash equivalent pursuant
14 to subdivision (d) of Section 2924h, a reference of that fact;
15 provided, that the trustee shall incur no liability for any good faith
16 error in stating the proper amount, including any amount provided
17 in good faith by or on behalf of the beneficiary. An inaccurate
18 statement of this amount shall not affect the validity of any sale
19 to a bona fide purchaser for value, nor shall the failure to post the
20 notice of sale on a door as provided by this subdivision affect the
21 validity of any sale to a bona fide purchaser for value.

22 (2) If the sale of the property is to be a unified sale as provided
23 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
24 9604 of the Commercial Code, the notice of sale shall also contain
25 a description of the personal property or fixtures to be sold. In the
26 case where it is contemplated that all of the personal property or
27 fixtures are to be sold, the description in the notice of the personal
28 property or fixtures shall be sufficient if it is the same as the
29 description of the personal property or fixtures contained in the
30 agreement creating the security interest in or encumbrance on the
31 personal property or fixtures or the filed financing statement
32 relating to the personal property or fixtures. In all other cases, the
33 description in the notice shall be sufficient if it would be a
34 sufficient description of the personal property or fixtures under
35 Section 9108 of the Commercial Code. Inclusion of a reference to
36 or a description of personal property or fixtures in a notice of sale
37 hereunder shall not constitute an election by the secured party to
38 conduct a unified sale pursuant to subparagraph (B) of paragraph
39 (1) of subdivision (a) of Section 9604 of the Commercial Code,
40 shall not obligate the secured party to conduct a unified sale

pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,
(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
YOU NEED AN EXPLANATION OF THE NATURE OF THE
PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the

1 trustor or mortgagor and the beneficiary or mortgagee prior to the
2 time set for sale, the sale shall be postponed to a date certain and
3 prior to which the property may be conveyed by the trustor to the
4 person making the offer according to its terms. The offer is
5 revocable until accepted. The performance of the offer, following
6 acceptance, according to its terms, by a conveyance of the property
7 to the offeror, shall operate to terminate any further proceeding
8 under the notice of sale and it shall be deemed revoked.

9 (5) In addition to the trustee fee pursuant to Section 2924c, the
10 trustee or mortgagee pursuant to a deed of trust or mortgage subject
11 to this subdivision shall be entitled to charge an additional fee of
12 fifty dollars (\$50).

13 (6) This subdivision applies only to property on which notices
14 of default were filed on or after the effective date of this
15 subdivision.

16 (d) If a property contains five or more multifamily units and a
17 public entity ~~holds a deed of trust or is a party to a recorded rent~~
18 *regulatory agreement or a recorded deed restriction* on the
19 property, the public entity may, by written notice to the trustee,
20 postpone the sale date by no more than 60 days.

21 (1) If multiple public entities ~~hold deeds of trust or are parties~~
22 *to a recorded rent regulatory agreement or a recorded deed*
23 *restriction* on the property pursuant to this subdivision, only one
24 entity may postpone the sale date.

25 (2) The power to postpone the sale pursuant to this subdivision
26 may be exercised only once.

27 (3) *The power to postpone the sale pursuant to this subdivision*
28 *may only be exercised if the public entity provides written notice*
29 *to the trustee by any one of the following methods:*

30 (A) *Certified or registered mail at least eight calendar days*
31 *prior to the noticed sale date.*

32 (B) *Guaranteed or overnight delivery service at least four*
33 *calendar days prior to the noticed sale date.*

34 (C) *Personal delivery at least three calendar days prior to the*
35 *noticed sale date.*

36 (e) For purposes of this section, ~~“public entity”~~ *the following*
37 *terms have the following meanings:*

38 (1) *“Public entity”* includes a city, county, city and county,
39 redevelopment agency, or any political subdivision thereof.

1 (2) “Recorded deed restriction” means a deed recorded as an
2 encumbrance against title to the property in the official records
3 of the county in which the property is located, which specifies that
4 all or a portion of the property’s usage is restricted to rental to
5 lower income households and identifies the number of units
6 restricted to use as low-income housing.

7 (3) “Regulatory agreement” means an enforceable and
8 verifiable agreement with a public entity that has provided
9 government financing for the acquisition, rehabilitation,
10 construction, development, or operation of a low-income housing
11 property that restricts all or a portion of the property’s usage for
12 rental to lower income households. The regulatory agreement shall
13 identify the number of units restricted for use as low-income
14 housing, specify the maximum rent allowed for those units, and
15 be recorded in the county in which the property is located.